

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3858 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PINJARA ISMAIL JUSAB

Versus

DEPUTY COLLECTOR

Appearance:

MR MB FAROOQUI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/09/2000

ORAL JUDGEMENT

This petition is preferred under Article 227 of the Constitution of India challenging three orders passed by the Revenue Authority which are at Annexure A, B and C respectively with the petition.

2. The short facts leading to this petition are that the petitioner being an Agriculturist purchased the

agricultural land in the year-1978 in public auction by a Civil Court, by paying the value of the highest bid of Rs.2150/-. The sale was confirmed by the Competent Authority and necessary mutation entry was made in the record of rights and other village forms maintained by the respondent-State and all these formalities were completed in the Year-1979. After about 10 years, the Deputy Collector, Nakhatrana took the entire revenue record mutation proceedings in revision suo motu and cancelled the Entry No.145 in the name in favour of the petitioner vide order dated 21/12/1989 which is at Annexure-A, under challenged. The order of Deputy Collector, Nakhatrana was challenged before the Collector of District-Kachchh-Bhuj by way of an appeal being Appeal No.13 of 1990. The said appeal, preferred by petitioner, after hearing the parties, was dismissed by the Collector vide order at Annexure-B to the petition. Both these order at Annexure-A and B were challenged before the Revenue Secretary (Appeals) of State of Gujarat at Ahmedabad and the Additional Chief Secretary (Appeals) dismissed the revision application preferred by the petitioner and that order is at Annexure-C. All the aforesaid orders at Annexure A, B and C are challenged by the petitioner by this petition.

3. After perusal of the averments made in the petition and the fact that the averments are not challenged by way of Affidavit by the respondent, it reveals that it is not a matter of dispute that the day on which the petitioner purchased the agricultural land in an auction held by the the Competent Authority namely the Civil Court he was a person entitled to purchase agricultural land. Therefore sale of agricultural land cannot be said to be an illegal sale as averred in the notice to show cause issued for the first time to the petitioner after a lapse of 10 years. It is also on record that the land purchased by the petitioner, after due permission, was put to non-agricultural use and a Hotel was erected on that very land.

4. The petitioner has challenged the order on various grounds, but he has mainly contended that the initiation of proceedings against the petitioner after lapses of 10 (ten) years and after erection of construction on the land in question has caused serious prejudice to the interest of the petitioner. Mr.Faruki learned counsel appearing for the petitioner has pointed out that the Revenue Authority harassed the petitioner unnecessarily by holding purchase of land by him as illegal and the petitioner is dragged to the present litigation. Mr.Faruki has shown a copy of the judgment

delivered by this Court in Special Civil Application No.4000 of 1992 dated 1st September, 2000 (Coram : Mr.justice D. P. Buch) wherein the present petitioner had challenged similar type of orders passed by the Revenue Authorities. In that case, the petitioner had purchased the agricultural land from a private party and in the case on hand, the petitioner has purchased the land through an auction held by the Civil Court in execution of a decree. It is contended by the petitioner that Special Mamlatdar who had issued a notice to show cause in the Year-1983 and had registered a Case No.1 of 1983 in this regard had withdrawn the notice, after varifying all relevant aspects. The Competent Authority has recorded the findings to the effect that the petitioner was an agricultural labourer. All the Authorities have ignored these aspects and has tried to reverse the findings of the Competent Authority after several years.

3. The decision in the case of State of Gujarat Vs. Patel Ragav Natha and others, reported in 1969 (10) GLR 992 is squarely applicable to the fact of this case. Point of limitation was agitated and argued before the Collector and Additional Chief Secretary (Appeals) of respondent-State. But it seems that the appellate as well as revisional authorities have not cared to consider these vital aspects in its true and proper perspectives. While dealing with the case of present petitioner at the time of hearing and disposal of Special Civil Application No.4000 of 1992, this Court, considering the almost similar facts has observed in para-(8) as under :-

"In the present case, we find that there is no explanation or reasons put forward by the respondents about inordinate delay of at least 7 years. In other words, there is delay of at least 7 years and there is no explanation for starting proceedings so late. It would therefore be necessary to consider the decision of the Hon'ble Apex Court in the case of State of Gujarat Vs. Patel Raghav Natha and others, reported in 1969 GLR 992 wherein it has sbeen held that when there is no period of limitation prescribed under Section 211 of the Bombay Land Revenue Code, it is plain that this power must be exercised in a reasonable time having regard to the nature of the order. There it has been further observed that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Section 65 shows that the period of three months

is considered ample time for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that the permission shall be deemed to have been granted. Reading Sections 211 and 65 it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector."

4. In the present case, the land in question was purchased by the petitioner in the Year-1978. It seems that with a view to protect the officers who acted high handedly by demolishing a superstructure of a Hotel for which the criminal proceedings were initiated, these proceedings against the petitioners were initiated at a belated stage and by way of an after thought. The proceedings initiated in the Year-1989 are not only belated or time barred proceedings, but it appears to be a colourable exercise of power. The petitioner has rightly agitated the issue of bonafide and has taken plea of malafide intention against the Revenue Authority. I would not like to pass any comment because the learned counsel has not prayed for it, and at this stage no such specific relief is also prayed from this court in this petition moved under Article 227 of the Constitution of India. My attention is also drawn to the similar type of verdict delivered by this Court. While dealing with the case of one Mukund Jayantbhai Patel Vs. Dahyabhai Rajibhai Patel (Special Civil Application No.5903 of 1999, Group Matters) this sCourt vide order dated 01/09/2000 (Coram : C. K. Buch,J.) and the orders passed by the Revenue Authority are quashed and set aside. The case reported in (1997) 6 S.C.C. 91, (Mohammad Kavi Mohammad Amin Vs. Fatimabibi Ibrahim) also is helpful to the case of the present petitioner.

5. In nutshell all the three orders under challenge, in the aforesaid view of the matter, cannot be sustained. This Court should exercise its jurisdiction vested under Article 227 of the Constitution of the India.

6. For the aforesaid reasons, this petition is allowed. Impugned orders at Annexures A, B and C are hereby quashed and set aside. Consequently the proceedings initiated against the petitioners are also quashed and set aside. Rule is made absolute. The interim relief granted by this Court on 18/08/1992, in light of the undertaking filed by the petitioner on 19th August, 1992 also shall have to be made absolute. Therefore, the interim relief granted earlier is hereby confirmed. Petitioner could have been awarded costs, but

I am not inclined to award the same as not pressed.
Hence no costs.

(C. K. Buch,J.)

(vijay)